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Attorneys for Plaintiff

Antonio Lopez, Johanna Lopez, &amp; S.L. by and through his guardian ad litem

Rocio Flores

**UNITED STATE DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ANTONIO LOPEZ, individually;  
 JOHANNA LOPEZ, individually;  
 M.R., by and through his guardian ad  
 litem, April Rodriguez, individually  
 and as successor in interest to  
 Brandon Lopez; B.L. and J.L., by and  
 through their guardian ad litem  
 Rachel Perez, individually and as  
 successors in interest to Brandon  
 Lopez; S.L., by and through his  
 guardian ad litem, Rocio Flores,  
 individually and as successor in  
 interest to Brandon Lopez,

Plaintiff,

vs.

Case No.: 8:22-cv-01351-JVS-ADS

*(Honorable James V. Selna; Magistrate  
 Judge Autumn D. Spaeth)*

**PLAINTIFFS' AMENDED EX  
PARTE MOTION TO MODIFY THE  
SCHEDULING ORDER**

*(Filed concurrently with Declaration of  
 Lena P. Andrews and Proposed Order)*

CITY OF ANAHEIM, a municipal corporation; CITY OF SANTA ANA, a municipal corporation; DAVID VALENTIN, individually and in his official capacity as the Chief of Police for the CITY OF SANTA ANA Police Department; JORGE CISNEROS, individually and in his official capacity as the Chief of Police for the CITY OF ANAHEIM Police Department; PAUL DELGADO, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; KENNETH WEBER, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; CAITLIN PANOV, individually and in her official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; DOES 1-10, individually and in their official capacity as law enforcement officers for the CITY OF ANAHEIM Police Department and CITY OF SANTA ANA Police Department,

Defendants.

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

Plaintiffs Johanna Lopez, Antonio Lopez, and S.L. hereby move this Court ex parte for an Order modifying the scheduling order and continuing all dates and deadlines in this matter. This Motion is made on the grounds that good cause exists to modify the scheduling order as the parties need additional time to mediate Plaintiffs Johanna Lopez and Antonio Lopez's claims and there is insufficient time under the current scheduling order to finish conducting necessary discovery before the current cut off.

1 Since April 18, 2024, the parties were actively engaged in crafting a  
 2 stipulation to extend all deadlines. However on May 2, 2024, the Defendants  
 3 changed their position without warning, approximately one week before the current  
 4 discovery cutoff, necessitating the filing of this Motion. The parties met and  
 5 conferred extensively regarding the stipulation, including agreeing upon a new trial  
 6 date. Once Defendants indicated that they would not move forward with the  
 7 stipulation, Plaintiff immediately met and conferred with Defendants regarding the  
 8 subject ex parte. Defendants indicated that they opposed Plaintiffs' Motion.

9 Plaintiffs previously filed an Ex Parte Motion to Modify the Scheduling Order  
 10 [Dkt. 117]. The Court denied that Motion stating that the "Court will consider  
 11 adjusting any dates other than the trial date and pretrial conference date." [Dkt. 119].  
 12 In accordance with the Court's Order, Plaintiffs hereby request a modest one month  
 13 continuance of the pretrial dates.

14 This amended ex parte motion is based on this notice, the attached  
 15 memorandum of points and authorities, the Declaration of Lena P. Andrews  
 16 (hereinafter "Andrews Decl.") all pleadings, papers and records in this action, and  
 17 any additional exhibits or oral argument as may be permitted by this Court.

18  
 19 Dated: May 9, 2024      **BURRIS, NISENBAUM, CURRY & LACY LLP**

20  
 21 By: /s/ Lena Andrews

22 DeWITT M. LACY  
 23 JOHN L. BURRIS  
 24 JULIA N. QUESADA  
 25 LENA P. ANDREWS  
 26 Attorneys for Plaintiff,  
 27 Antonio Lopez, Johanna Lopez, &  
 S.L. by and through his guardian ad  
 litem Rocio Flores

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiffs Johanna Lopez, Antonio Lopez, and S.L. hereby move and respectfully request this Court grant Plaintiffs' request to modify the scheduling order in this matter as described *infra*.

### **II. STATEMENT OF FACTS**

Since the City of Anaheim Defendants filed their Motion to Continue, the parties have been diligently engaged in the litigation. (Andrews Decl., ¶ 2). As this Court is aware, the four Minor Plaintiffs and the City of Anaheim Defendants have agreed to settle their claims. (Dkt. 112). The parties are diligently working to finalize the settlement and make arrangements for structured settlements. (Andrews Decl., ¶ 2; see also Dkt. 114). Plaintiffs Johanna Lopez and Antonio Lopez were not parties to the settlement between the Minor Plaintiffs and the City of Anaheim Defendants. (Andrews Decl., ¶ 3; see also Dkt. 112).

On April 2, 2024, Plaintiffs Johanna Lopez and Antonio Lopez and the City of Anaheim Defendants were scheduled to attend a mediation with the Honorable Judge Joseph Biderman. (Andrews Decl., ¶ 4). Due to a conflict with her employment, Plaintiff Johanna Lopez became unavailable on April 2, 2024, necessitating the cancellation of the mediation. (Andrews Decl., ¶ 5). The intention was always to reschedule the mediation as both parties are hopeful that the remaining claims can be settled. (Andrews Decl., ¶ 6).

Thereafter attorneys for all parties, including DeWitt Lacy, Julia Quesada, Lena Andrews, Tony Sain, and Tori Bakken, began a federal trial in the courtroom of the Honorable Judge Robinson in the Southern District of California. (Andrews Decl., ¶ 7). The trial began on April 16, 2024, and concluded on April 29, 2024. (Andrews Decl., ¶ 8). Due to the trial and counsel for all parties unavailability, it

1 was not possible to reschedule the mediation between April 2, 2024, and April 29,  
2 2024. (Andrews Decl., ¶ 9).

3 On April 18, 2024, counsel for Plaintiffs reached out to counsel for the City  
4 of Anaheim Defendants via email and requested the parties meet and confer  
5 regarding a stipulation to modify the scheduling order due to the impending  
6 discovery cut off, the necessity to re-schedule the mediation prior to the fact  
7 discovery cut off and expert disclosure deadline, and Plaintiffs' counsel's conflict  
8 with the currently scheduled trial date in this matter. (Exhibit A to Andrews Decl.)  
9 Plaintiffs did not receive a response. *Id.*

10 On April 22, 2024, Plaintiffs' counsel again reached out via email regarding  
11 the proposed stipulation. *Id.* On April 23, 2024, at the request of defense counsel,  
12 Plaintiffs' counsel circulated a draft stipulation to assist the Defendants in  
13 determining their availability for trial. *Id.*

14 On April 26, 2024, after receiving no response, Plaintiffs' counsel again  
15 followed up via email. *Id.* That day, Mr. Sain responded that counsel was still trying  
16 to coordinate their schedule and would provide a suggested trial date soon. *Id.* Mr.  
17 Sain also stated that they could not agree to a continuance unless the mediation had  
18 been "rescheduled." *Id.* Later that day, Ms. Bakken indicated that defense counsel's  
19 first availability for trial would be June of 2025. *Id.* Plaintiffs agreed to this date. *Id.*

20 The parties thereafter worked to find a date to reschedule the mediation and  
21 May 14, 2024. (Andrews Decl., ¶ 10). Suddenly, on May 2, 2024, after two weeks  
22 of discussions during which the parties had agree on a time frame for trial and had  
23 confirmed the date for the mediation, counsel for Defendants changed their position  
24 and stated that they would not agree to continue any dates and deadlines until the  
25 mediation had *occurred*. (Exhibit B to Andrews Decl.) The previous agreement, per  
26 Mr. Sain, that Plaintiffs relied upon was that the stipulation would be signed once  
27 the mediation had been *rescheduled*. (Exhibit A to Andrews Decl.)

1 Plaintiffs thereafter informed Defendants that they would be moving ex parte  
2 to modify the scheduling order in accordance with the previous agreement as  
3 Plaintiffs had relied on the representations of defense counsel regarding the  
4 stipulation. (Exhibit A to Andrews Decl.) Defendants indicated that they would  
5 oppose this Motion but would be amenable to reconsider the stipulation after the  
6 mediation scheduled for May 14, 2024, if the case does not resolve. *Id.*

7 Plaintiffs thereafter filed their ex parte motion. [Dkt. 117]. Defendants  
8 opposed the motion. [Dkt. 118]. The Court thereafter denied Plaintiffs' ex parte  
9 motion, stating "Court will consider adjusting any dates other than the trial date and  
10 pretrial conference date." [Dkt. 119].

11 Plaintiffs' counsel thereafter reached out to counsel for Defendants to meet  
12 and confer regarding a stipulation to move only the pretrial dates in accordance with  
13 the Court's Order and Plaintiffs intention to file an amended ex parte motion should  
14 the parties not be able to reach an agreement. (Exhibit C to Andrews Decl.)  
15 Defendants again stated that they would be unwilling to stipulate to any continuance  
16 until after the mediation had occurred on May 14, 2024. *Id.*

17 As previously explained, there is still additional discovery that Plaintiffs need  
18 to complete, including the depositions of the named Defendant officers. (Andrews  
19 Decl., ¶ 11). Due to the previously scheduled mediation on April 2<sup>nd</sup>, the trial which  
20 lasted from April 16<sup>th</sup> to April 29<sup>th</sup>, and both parties desire to mediate the case prior  
21 to incurring additional costs, the depositions of the Defendant Officers have not yet  
22 occurred. (Andrews Decl., ¶ 12). In addition, the depositions of the Defendant  
23 Officers had not occurred previously as the discovery as to the Defendant Officers  
24 was stayed until late November of 2023. [Dkt. 103]. Thereafter, the parties were  
25 diligently engaged in settlement negotiations. (Andrews Decl., ¶ 13). Accordingly,  
26 the depositions of the Defendant Officers have not yet been taken. (Andrews Decl.,  
27 ¶ 14). Additional time is thus necessary to permit the mediation to go forward on

1 May 14, 2024, and, if the case is not resolved on that date, to allow time to finish  
2 fact discovery prior to incurring the expense of retaining experts. (Andrews Decl., ¶  
3 15).

4 Finally, Plaintiffs' counsel is not available on the date currently set for trial.  
5 (Andrews Decl., ¶ 16). The Court previously set a trial date of September 17, 2024,  
6 in response to Defendants' Motion to Continue Case Management Deadlines,  
7 Including Trial Date. [Dkts. 104, 110]. Plaintiffs' Counsel is scheduled to begin  
8 another trial on September 9, 2024, in the courtroom of the Honorable Magistrate  
9 Judge Christopher D. Baker, Eastern District of California, in the matter of *Dibbern*  
10 *v City of Bakersfield et al*, case no. 1:22-cv-00723-CDB. *Id.* The trial is expected to  
11 last at least two weeks. *Id.* The *Dibbern* trial was scheduled prior to the trial in this  
12 matter. (Andrews Decl., ¶ 17).

### 13 III. ARGUMENT

#### 14 A. Procedural Standards for Ex Parte Motions

15 Local Rule 7-19 et seq. require movant to make a good faith effort to advise  
16 opposing counsel of the date and substance of the ex parte motion. In addition, it  
17 requires the memorandum of points and authorities to contain the name and contact  
18 information for the opposing party.

19 Here, the parties met and conferred regarding the anticipated stipulation to  
20 continue for almost two weeks. Plaintiffs counsel circulated a draft stipulation that  
21 outlined Plaintiffs' contentions regarding good cause and included proposed dates  
22 based on both counsels' availability. The same good cause underscores this Motion.  
23 In addition, Plaintiffs counsel informed opposing counsel that they would be filing  
24 an ex parte without delay. Defendants indicated that they opposed the motion.

25 Plaintiffs thereafter filed their ex parte and Defendants filed their opposition.  
26 The Court ultimately denied the ex parte but stated that it would "consider adjusting  
27 any dates other than the trial date and pretrial conference date." [Dkt. 119]. Plaintiff



1 thereafter met and conferred with Defendants about a more modest continuance that  
2 would leave the final pretrial conference and trial date in place and included a table  
3 of suggested dates. Plaintiffs clearly stated that they would be filing an amended ex  
4 parte if an agreement could not be reached. Defendants stated they would not be  
5 willing to enter into any stipulation unless the May 14, 2024, mediation was  
6 unsuccessful. Plaintiffs agreed to note their continued opposition in the moving  
7 papers.

8 Contact information for counsel for the opposing party is as follows:

9 Tony Sain & Tori Bakken, Manning & Kass Ellrod Trester Ramirez, 801 S  
10 Figueroa St 15th Floor, Los Angeles, CA 90017; (213) 624-6900.

11 Thus, Plaintiff has complied with Local Rule 7-19.

12 B. Standard for Ex Parte Motions

13 As stated in this Court's Initial Order, *Ex parte* applications are solely for  
14 extraordinary relief and should be used with discretion. *See Mission Power*  
15 *Engineering Company v. Continental Casualty Co.*, 883 F. Supp. 488 (C. D. Cal.  
16 1995).

17 In this matter, an *ex parte* application is appropriate due to the impending  
18 deadlines and Plaintiffs' counsel's reasonable reliance on the representations of  
19 counsel pertaining to the stipulation. Plaintiffs' counsel began meeting and  
20 conferring with defense counsel on April 18, 2024. At no point between April 18  
21 and May 2, 2024, did defense counsel indicate that it would not be willing to agree  
22 to the stipulation until after the mediation had *occurred*. The only conditions  
23 suggested by Defendants were their requested trial date in June of 2025 and that the  
24 mediation be *rescheduled* prior to signing the stipulation. Plaintiff met both  
25 conditions. After working diligently to confirm the mediation so the stipulation  
26 could be timely filed prior to the discovery cut off, defense counsel abruptly changed  
27 their position and refused to agree to the stipulation until *after* the mediation took



place. This would leave Plaintiff in a very uncertain position should the case not settle as fact discovery will have closed and expert disclosures would be due in a matter of days. This would necessitate late motion work to re-open discovery and extend the expert deadlines, which would unnecessarily burden the Court. Instead, Plaintiff is diligently seeking a modification of the scheduling now to ensure that all requests are timely made.

Plaintiffs will suffer irreparable harm if the scheduling order is not modified. If the case does not settle on May 14, 2024, then Plaintiffs will be left without necessary depositions and will have to expend additional funds to obtain rush reports from their experts. In addition, not modifying the scheduling order is likely to hinder full and meaningful settlement discussions.

This harm and prejudice can be avoided by modifying the scheduling order to allow the fact discovery deadline to fall after May 14, 2024, to allow the parties to complete discovery prior to disclosing experts and expending unnecessary funds and judicial resources should the case not settle.

### C. Requested Modification

In accordance with the Court's Order [Dkt. 119], Plaintiffs respectfully request this Court modify the scheduling order as follows:

Case Event	Current Deadline [Dkt 110]	Proposed Deadline
Jury Trial	September 17, 2024, at 8:30 am	no change.
File Findings of Fact and Conclusions of Law	September 10, 2024	no change.
Final Pre-Trial Conference	September 9, 2024, at 11:00 am	no change.
File Pre-Trial Documents	August 26, 2024	no change.
File Motions in Limine	August 5, 2024	August 19, 2024
Fact Discovery Cut-off	May 10, 2024	June 7, 2024
Expert Discovery Cut-off	June 14, 2024	July 12, 2024

Initial Disclosure of Experts	May 17, 2024	June 14, 2024
Rebuttal Disclosure of Experts	May 31, 2024	June 28, 2024
Law and Motion Cut-off	July 15, 2024, at 1: 30 pm	August 12, 2024, at 1:30 pm
Motions to be filed and served	June 17, 2024	July 15, 2024

**D. Good Cause Exists for This Court to Modify the Scheduling Order**

Pursuant to FRCP 16(b)(4), “[a] schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. Proc. 16(b)(4). The Court’s Chambers’ Rules further provide that, “[t]he dates and times set in the Scheduling Order will not be modified except for good cause shown.” The “good cause” standard under FRCP 16 focused on the “reasonable diligence” of the moving party. *Noyes v. Kelly Services*, 488 F.3d 1163, 1174 n.6 (9th Cir. 2007). A party demonstrates good cause by showing that, even with the existence of due diligence, he or she was unable to meet the timetable set forth in the order. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

**a. Plaintiffs Have Demonstrated Reasonable Diligence**

As the facts above demonstrate, Plaintiffs have been diligently pursuing discovery in this case. Plaintiffs have propounded significant written discovery in this matter, despite the extended stay of discovery as to the Defendant Officers. The stay was only lifted as of November 21, 2023.

Since the stay, Plaintiffs have been diligently engaged in negotiating resolution of the case. The claims of all the Minor Plaintiffs have been settled and the parties are working towards finalizing the settlement and distribution of funds. Plaintiffs Johanna Lopez and Antonio Lopez have also been working towards resolution of their claims and the parties now have now confirmed that the mediation will go forward on May 14, 2024. The parties were previously set to go to mediation

1 on April 2, 2024, however Plaintiffs were forced to cancel to an employment related  
2 scheduling conflict. Counsel for both Plaintiffs Johanna Lopez and Antonio Lopez  
3 and the City of Anaheim Defendants thereafter began a trial together that lasted from  
4 April 16, 2024, to April 29, 2024. This trial created an immovable scheduling  
5 conflict thus no depositions nor mediations could take place during this time.

6 Realizing the parties were running out of time to participate in a mediation  
7 prior to incurring additional costs of depositions and retaining experts, Plaintiffs'  
8 counsel reached out and attempted to negotiate a stipulation that would allow the  
9 case to go to mediation prior to incurring these expenses and wasting the Court's  
10 time with unnecessary motion work. Defense counsel then strung Plaintiffs' counsel  
11 along for two weeks while Plaintiffs' counsel worked in good faith towards a  
12 stipulation. Thereafter, on May 2, 2024, defense counsel changed its position  
13 without warning and stated that it would not agree to a stipulation until after the  
14 mediation had occurred, rather than after it was rescheduled and confirmed.

15 Plaintiffs remain optimistic that the case could resolve on May 14, 2024.  
16 However, Plaintiffs cannot wait to see how the mediation turns out prior to seeking  
17 relief given the impending fact discovery and expert disclosure deadlines. A  
18 modification of the scheduling order will benefit both sides as all parties will be able  
19 to avoid unnecessary costs pertaining to depositions, rushed transcript orders, and  
20 expert fees while promoting meaningful negotiations between the parties. The  
21 modification of the scheduling order will also conserve judicial resources and  
22 alleviating additional motion work should the case not settle on May 14, 2024.

23 //

24 //

25 //

26 b. No Undue Prejudice to Defendants Will Occur if the Court  
27 Grants Plaintiffs' Motion

1 As evidenced by Defendants initial agreement to stipulate to modify the  
2 scheduling order, Defendants will not incur any prejudice if the Court grants  
3 Plaintiffs Motion. The requested schedule takes into account defense counsel's  
4 schedule and professed unavailability until June of 2025. Moreover, the modification  
5 will also save Defendants from expending unnecessary costs and attorneys' fees in  
6 taking additional depositions and hiring experts before the parties have had a chance  
7 to meaningfully negotiate.

8 Thus, extending the discovery deadlines will benefit Defendants as well.

9 **IV. CONCLUSION**

10 Based on the foregoing, Plaintiffs respectfully request that the Court grant this  
11 Amended Ex Parte Motion to Modify the Court's Scheduling Order.

12  
13 Dated: May 9, 2024

**BURRIS, NISENBAUM, CURRY & LACY LLP**

14  
15 By: /s/ Lena Andrews

16 DeWITT M. LACY

17 JOHN L. BURRIS

18 JULIA N. QUESADA

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